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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1278

CHARLES ADAMS, LARRY WASHINGTON, GEORGE
W. ANDREWS, BILLY LOVETT, and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

vs.

FEDERAL EXPRESS CORPORATION,

Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

SCOTT F. MAY and
JOHN T. MORSE

Suite 2600
100 North Main Building
Memphis, Tennessee 38103
Telephone: 901/525-1691

Attorneys for Respondent

Of Counsel:

WATSON, COX, ARNOULT & MAY

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The petitioners, Charles Adams, Larry Washington, George W. Andrews, Billy Lovett, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America have prayed that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The Decision and Order of the United States District Court for the Western District of Tennessee is unofficially reported at 90 LRRM 2742; it is reprinted in Appendix A,

pages 1a-5a of the Petition. The Opinion of the Sixth Circuit Court of Appeals is unofficially reported at 94 LRRM 2008; it is reprinted in Appendix B, pages 9a-17a of the Petition. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C. §§1331, 1337 and 45 U.S.C. §151, *et seq.* The jurisdiction of the Sixth Circuit Court of Appeals was based on 28 U.S.C. §§1291, 1292(a).

JURISDICTION

The Judgment of the Court of Appeals for the Sixth Circuit was entered on December 16, 1976. It is reprinted in Appendix C, page 18a of the Petition. This Court has jurisdiction under 28 U.S.C. §1254(1). The Petition for a Writ of Certiorari was timely filed with this Court.

QUESTIONS PRESENTED

1. Does an uncertified labor organization engaged in an active attempt to organize the employees of an air carrier for purposes of collective bargaining under the Railway Labor Act, 45 U.S.C. §151, *et seq.*, have standing to seek injunctive relief against the employer's alleged interference with the employees' organizational rights protected by Section 2, Third and Fourth of the Act where:
 - (a) Such relief is sought by the organization on its own behalf to prevent the employer's alleged destruction of the organizational campaign; and,
 - (b) The organization is seeking relief against alleged violations of the statutory rights of employees who have executed an instrument entitled "Request for Employees Representation Election Under the Railway Labor Act?"

2. What standards must be met in order to obtain preliminary injunctive relief against alleged pre-election carrier interference with the organizational rights of employees?

STATUTES INVOLVED

This case involves 45 U.S.C. §§151 and 152. Said statutes are reprinted in Appendix A, pages 1A-10A, *infra*.

STATEMENT OF THE CASE

1. The Factual Background

Respondent, Federal Express Corporation (Federal Express), is a Delaware corporation, incorporated in 1971, with its principal-place of business being the corporate headquarters in Memphis, Tennessee; there it maintains: an administrative headquarters, a large package sorting facility ("Hub"), a maintenance operation for its aircraft and other related facilities (J.A. 196).¹ Federal Express is a chartered air freight carrier, subject to the Federal Aviation Act of 1958, 49 U.S.C. §1301, *et seq.*; it began operation in mid-1972 as an air taxi operation. The carrier specializes in providing an expedited, small-parcel cargo service between Memphis and major market areas located in some seventy (70) cities throughout the United States. Federal Express employs a fleet of approximately thirty (30) Falcon jet aircraft for intercity, interstate shipment; these aircraft are operated by pilots who are trained at

1. Reference "J.A." used in the following paragraphs refers to the Joint Appendix in Case No. 75-2340, which Petitioners have requested the Sixth Circuit to certify to this Court pursuant to Rule 21(1).

the Federal Express facilities in Memphis. Federal Express operates by flying a "clearing house pattern" where most aircraft originate in outlying areas (transit cities), pick up their aggregate inbound production, and arrive at the central terminal, Memphis, where the pieces are sorted by destination, loaded on outbound aircraft, which then in turn retrace the trips to the seventy (70) cities, aforementioned. When the packages arrive at the various destination cities, they are unloaded by employees of Federal Express, loaded on vans leased and operated by Federal Express, and delivered to the ultimate recipients, the addressees.

Federal Express currently employs in excess of fifteen hundred (1500) persons, both in the Memphis facility and in the approximate seventy (70) outlying cities that it serves; included in these employees are pilots, truck drivers (couriers), sorters and handlers, engineers, mechanics, as well as a large contingent of office and supervisory personnel.

During the early part of February, 1975, the management of Federal Express was notified by the International Brotherhood of Teamsters, Airline Division (Teamsters), that the Teamsters intended to begin a nationwide organization drive in which it would attempt to organize both the maintenance employees in Memphis, the Hub employees in Memphis, as well as the station employees in various cities throughout the country. At the request of the Teamsters, several officials of Federal Express flew to California on February 11, 1975, and met with M. L. Griswold, Director of the Teamster Airline Division.

Upon their return to Memphis, officials of Federal Express issued a memorandum to its employees which completely outlined the meeting and the proposal of the Teamsters (J.A. 393-395).

(a) Discharge of Larry Washington.

Petitioner Larry Washington was employed as a Hub worker on February 21, 1974, and was discharged on February 7, 1975, as is reflected in the employee status form (J.A. 373), after he acquired three (3) disciplinary letters in his file, the last disciplinary letter having been issued after he was found, by his supervisor, sleeping in the men's bathroom in a locked stall, sitting on the commode with his pants up and belted, and his head down on his chest (J.A. 376).

It should be noted that this discharge took place approximately four (4) days prior to the meeting held in California between officials of Federal Express and the Teamsters, and prior to the start of the union's campaign.

(b) Campaign Activities and Events in March, 1975.

From mid-February and continuing through March and April of 1975, the Teamsters carried on an extensive nationwide campaign to organize employees of Federal Express with the main emphasis being placed on employees at the Memphis facility; they held meetings at least on a weekly basis and invited all employees of Federal Express to attend (J.A. 323). During this time period, the Teamsters solicited signatures of the various Federal Express employees on a printed form entitled "Request for Employees Representation Election Under the Railway Labor Act" (Exhibit No. 29, J.A. 420); this form being similar, if not identical, to all the standard forms utilized by labor organizations in attempting to obtain a "showing of interest" in order that an election might be held under the provisions of the National Labor Relations Act, as

well as provisions of the Railway Labor Act², said cards are generally known as "authorization cards" and create absolutely no agency relationship, either express or implied, but are utilized by the National Mediation Board to determine whether or not a "representation dispute" exists.

(c) Transfer of Billy Lovett.

Petitioner Billy Lovett was first employed by Federal Express in August of 1972 and remained a Federal Express employee until he voluntarily quit to go into the military service on April 28, 1975 (J.A. 87). He began his employment as an apprentice mechanic, worked up to the position of mechanic, and then was promoted to lead man approximately one (1) year before he left the company.

In March of 1975, the company being aware that Lovett was leaving for military service at the end of April, promoted Lovett to a salaried position in the training department. He was told that he was receiving this promotion because of his experience with the company and because the company felt that he could do a good job. Because he was going into the military, this would give another man a chance to move up to the position that he currently held, that of lead man (J.A. 77).

Lovett, although initially dissatisfied with the promotion and transfer, finally agreed to accept the job stating that there was no use in keeping someone else from mak-

2. National Mediation Board Rules, Title 29, Chapter X, C.F.R. §1206. "Where the employees involved in a representation dispute are unrepresented, a showing of proved authorizations from at least thirty-five (35) percent of the employees in the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of Section 2, Ninth, of the Railway Labor Act."

ing a good bit more money and holding them back (J.A. 82).

Although the company had been aware of Mr. Lovett's pro-union sentiments for over a year (Lovett was involved in another unionization attempt at Federal Express approximately twelve months prior to the Teamster campaign.), he had been continually promoted and given jobs of more responsibility during that time (J.A. 83). During Lovett's tenure in the training department, he was in constant contact with the mechanic employees, there was no attempt to isolate him from them (J.A. 340-341).

(d) Discharge of Charles Adams.

Petitioner Charles Adams, a janitor, was discharged on March 12, 1975, because he had received numerous disciplinary letters resulting from his tardiness and absenteeism, and finally, on that date, he received his last disciplinary letter for refusing to obey a direct order of his superior (J.A. 381-384).

Petitioner Adams was ordered to remove a "Go Teamster" button and he refused; however, he admitted that during his normal work day he would go into the area where engines were being worked on and outside of the office building in the area where jet planes operated, and therefore, there was the distinct possibility that the "Go Teamster" button he was wearing could fall off and be ingested into a jet engine, thus causing great property damage and threat of bodily harm to individuals in the area (J.A. 67).

(e) Discharge of George Andrews.

Petitioner George Andrews was discharged due to frequent absenteeism and tardiness, having received three

(3) previous letters of reprimand prior to the letter he received on April 10, the date of his discharge (J.A. 386-390).

Petitioner Andrews alleged that he was discharged because of his union activities; however, his personnel record reflects that he began receiving disciplinary letters in October of 1974, was given a three (3) day suspension in January of 1975. He admitted that he did not become involved with the union activity until February of 1975 (J.A. 160-161).

(f) NMB Election.

After the District Court hearing and decision, but prior to the argument of the matter on appeal to the Sixth Circuit, an election was held among the mechanics and related employees of Federal Express. On January 13, 1976, the National Mediation Board dismissed the Petition based on the results of that election in which the Teamsters received eleven (11) out of a possible one hundred four (104) votes (Petitioners' Appendix, pages 16a-17a).

2. Proceedings Below

A. Proceedings In The District Court

Petitioners instituted this action in the District Court against Federal Express alleging that the carrier had interfered with, coerced and restrained its employees in the exercise of their organizational rights in violation of Section 2, Third and Fourth of the Railway Labor Act, 45 U.S.C. §152.

After a six (6) day hearing, and submission of briefs by all parties, the District Court dismissed the Teamsters' Complaint and denied the individual plaintiffs' Motion for Preliminary Injunctive Relief.

The District Court found that the Teamsters lacked "standing" to bring the suit and that the individual plaintiffs had not carried their burden as to the issuance of the Preliminary Injunction; the District Court holding that the plaintiffs have failed to prove that they will suffer irreparable harm if the injunctive relief is not granted, and further, that the defendant would, in fact, suffer irreparable harm if the injunction sought were granted; the District Court further found that the public interest would not be served by the granting of the injunction sought.

The District Court reasoned that although the management of Federal Express was admittedly not in favor of the union and had communicated that disfavor to the employees, that such action by Federal Express did not warrant that extraordinary remedy sought by the plaintiffs, the record before the Court not supporting a finding that Federal Express has or had a practice of discharging employees that were union advocates (Petitioners' Appendix A, pages 4a-5a).

B. Proceedings In The Court Of Appeals

The plaintiffs filed a joint appeal from the decision of the District Court denying the preliminary injunction and dismissing the Teamsters as a party to the litigation. On December 16, 1976, Chief Circuit Judge Phillips, speaking for the panel which heard the appeal, issued its opinion and judgment affirming the District Court, both as to the dismissal of the Teamsters' action and as to the denial of the Motion for Preliminary Injunction.

The Circuit Court first addressed itself to the issue of "jurisdiction" of the District Court to hear the matter at all, stating that it was reluctant to impose upon a District Court duties analogous to those of an administrative agency; however, the Circuit Court properly found that

the District Court has the requisite jurisdiction pursuant to a number of decisions of this Court.

The Circuit Court then addressed the "standing" of an uncertified union to seek relief under provisions of the Railway Labor Act; the Circuit Court found, based on its prior decision in *IBT v. Zantop*, 394 F.2d 36 (6th Cir. 1968), that the Railway Labor Act confers no express or implied cause of action in favor of an uncertified union to file suit on behalf of employees it seeks to represent, seeking injunctive relief enjoining the carrier from violations of provisions of the Railway Labor Act.

The Circuit Court also affirmed the ruling of the District Court in denying the Motion for Preliminary Injunction, holding that the granting or denial of a Preliminary Injunction is within the sound judicial discretion of the trial court and it will not be disturbed unless contrary to some rule of equity or an abuse of discretion. The Circuit Court reviewed the findings of fact concerning the various alleged discriminatory acts, found the facts in the case to be heavily contested, and further found that the District Court did not abuse its discretion in denying the injunctive relief sought. The Circuit Court specifically affirmed the test for the issuance of a Preliminary Injunction utilized by the District Court (Petitioners' Appendix B, pages 9a-17a).

REASONS FOR DENYING THE WRIT

I.

The Court Below Has Decided An Important Federal Question But Not In Conflict With This Court's Decisions And Well Established "Standing" Principles.

In holding that an uncertified labor organization (the Teamsters in the instant case) does not have an express or implied right to maintain an action under the Railway Labor Act, 45 U.S.C. §151, et seq., the District Court and the Circuit Court have decided an important question of Federal law which has not been settled by this Court; however, this decision of the Court of Appeals for the Sixth Circuit is not in conflict with a decision of any other Court of Appeals, nor in conflict with any decision of this Court.

The factual issues concerning the dismissal of the Teamsters' action are not in dispute, for the union admits in its Complaint, its Brief to the Sixth Circuit, and its Petition for Certiorari to this Court that it is not a party to any collective bargaining agreement or other contract with Federal Express, and that the union is merely "seeking" to become the "representative." Neither 45 U.S.C. §152, Third and Fourth, nor the Railway Labor Act in general, give any right or standing to an "uncertified" labor organization, but confer rights and duties only upon the carrier and the employees.

The term "representative," as used in the Railway Labor Act, is defined in 45 U.S.C. §151, Sixth:

"The term 'representative' means any person or persons, labor unions, organization, or corporation, designated either by a carrier or group of carriers or

by its or their employees, to act for it or them." (Emphasis added.)

Under the provisions of the Railway Labor Act, there is one and only one way in which a labor union or organization may become the "representative" of the employees of a carrier governed by said Act, and that is for that union to "obtain certification" from the National Mediation Board pursuant to 45 U.S.C. §152, Ninth. *Virginia Railway Company v. System Federation No. 40*, 300 U.S. 515.

The decision of the Sixth Circuit Court of Appeals is in accord with decisions of this Court holding that a private right of action is available *only* to employees or to "certified" representatives of said employees.

Petitioners' reliance on this Court's decision in *Texas & N.O.R.R. v. Brotherhood of Ry. Clerks*, 281 U.S. 548, is misplaced, for in that case the Brotherhood had been authorized by a majority of the employees of the Railroad Company to represent them in all matters relating to their employment, and that representation had been recognized by the Railroad Company for a number of years. The difficulty, leading to the injunction granted to the Brotherhood, arose only after the Brotherhood applied for an increase in the wages of the railway clerks, and that request was denied. The Railroad Company subsequently endeavored to intimidate its employees to join a rival "company union," thus, the facts in the instant case, and the facts dealt with by this Court in *Texas & N.O.* are distinguishable; therefore, the decision of the Circuit Court was proper.

It is stipulated by the respondent that an individual employee of a carrier may bring suit under Section 2, Third and Fourth of the Act against his employer to halt

coercive acts against him personally and coercive acts directed at his fellow employees. *Burke v. Compania Mexicana De Aviacion, S.A.*, 433 F.2d 1031 (C.A. 9, 1970); *Griffin v. Piedmont Aviation, Inc.*, 87 L.R.R.M. 2764 (N.D. Ga., 1974).

The petitioner, however, would have this Court hold that an uncertified union has standing to sue, but the petitioner is unable to find any case law from this Court, or a lower court in which the relief sought by the Teamsters herein has been granted under the Railway Labor Act. Therefore, the Teamsters requested both the District Court and the Court of Appeals for the Sixth Circuit to make a "leap of faith" and apply the rationale and reasoning from cases decided under the National Labor Relations Act, an act which has absolutely no bearing on the instant case; the Teamsters now requests that this Court make the same "leap of faith" that was rejected by both the lower courts.

Although both the Railway Labor Act and the National Labor Relations Act deal with the relationship between employer and employee, the similarity ends at that point. The National Labor Relations Act is far more detailed and far more specific as to the particular acts that it condones and the particular acts that it prohibits. Additionally, the National Labor Relations Act specifically gives rights to an "uncertified union" to file charges before the National Labor Relations Board (*N.L.R.B. v. General Shoe Corp.*, 191 F.2d 504 (C.A. 6th, 1951)). No such specific authorization is found anywhere in the Railway Labor Act.

The varied groups of employees with which the two Acts deal are also entirely different; pursuant to provisions of the National Labor Relations Act, the National Labor Relations Board may hold an election in a "collective

bargaining unit" of employees in one particular office of the employer in one city even though that employer might have many employees doing exactly the same job in many different offices or plants within the same city, as well as different offices and plants scattered across the country. However, the National Mediation Board, pursuant to the dictates of the Railway Labor Act, does not have such latitude and must certify "craft or classes" of employees of a particular employer (carrier) throughout the entire country.

As noted by the National Mediation Board in its Case No. R-1447, *American Airlines, Inc. Airline Mechanics, Fleet Service Personnel* (1945) (National Mediation Board Craft or Class Cases, Vol. 1, p. 394):

"We think it manifest, from a comparison of the related clauses of the two acts (National Labor Relations Act and Railway Labor Act) that the National Mediation Board does not enjoy the wide latitude of discretion which Congress granted to the National Labor Board. The Railway Labor Act deals only in terms of 'craft or class'; no other unit of collective bargaining is considered. There is no authorization to the Board to subdivide or sectionalize, or to designate a representative on any other basis than the craft or class unit." (p. 399).

The Teamsters contend that they have two claims of "standing": (1) that the union has suffered *actual injury* by the carrier's action which threatened to destroy its organizational campaign and thereby prevent the union from becoming the certified representative of the mechanic craft or class; and, (2) that the union could represent employee *supporters* (as opposed to members) who themselves had suffered alleged injury as a result of the carrier's conduct.

In the lower courts the Teamsters have classed the standing arguments in regard to the question of their "personal stake" in the outcome of the controversy and their having a "nexus" with the interest of the respondents' employees sufficient to establish its standing to sue.

Both lower courts have been quick to note, however, that the instant litigation is not a "public interest civil rights case" citing *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958), nor an "environmental case" citing *Sierra Club v. Morton*, 405 U.S. 727 (1972).

The Teamsters in their argument as to standing have relied on this Court's opinion in *Sierra Club, id.*; however, this reliance is misplaced, for this Court found (405 U.S. 727, 735) that the Sierra Club failed to allege that any of its members would be affected in any of their activities or pastimes by the development which was complained of in that case.

In the instant case, it is admitted by all parties that there are *no members* of the Teamsters who are employees of Federal Express; therefore, the Teamsters cannot be representing any interest of its "members."

Furthermore, the Teamsters' reliance on this Court's recent opinion in *Warth v. Seldin*, 422 U.S. 490 (1975) is also misplaced, for as this Court found there, none of the plaintiffs or intervenors had standing to sue:

"As we have observed above, Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute (citing cases). No such statute is applicable here."

Just as no statute was applicable to the various plaintiffs and intervenors in *Warth v. Seldin*, no statute is "explicitly" applicable to the Teamsters in the instant case.

The question then remains as to whether the Railway Labor Act confers an "implied" right of action on an uncertified labor organization. This Court in *Cort v. Ash*, 422 U.S. 66, 78 (1975) held, as quoted by the Sixth Circuit in the instant case:

"In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' *Texas & Pacific R. Company v. Rigsby*, 241 U.S. 33, 39 (1916) (Emphasis supplied)—that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See e.g., *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 458, 460 (1974) (Amtrak). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, e.g. *Amtrak, supra*; *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 423 (1975); *Calhoon v. Harvey*, 379 U.S. 134 (1964)."

Applying the foregoing directives of this Court, the Sixth Circuit correctly concluded that the Railway Labor Act confers no implied right of action upon an uncertified union to maintain a suit on behalf of employees it seeks to represent, nor on its own behalf.

This Court in *General Committee v. M.K.T.R.*, 320 U.S. 323 (1943), in reversing both the lower courts and denying the relief sought by the union therein, construed the

Congressional intent regarding the Railway Labor Act, and at page 337 stated:

"In view of the pattern of this legislation and its history, the command of the act should be explicit and the purpose to afford a judicial remedy plain before any obligation enforceable in the Courts should be implied. Unless that test is met, the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliances on the voluntary process of conciliation, mediation and arbitration. (Citing from Congressional Record) *The Courts should not rush in where Congress has not chosen to tread.*" (Emphasis added.)

II.

The Court Below Has Not Decided Important Questions Of Federal Law In Derogation Of The National Labor Policy.

Petitioner contends that the lower court's decision effectively eliminates the protection of the employee's rights to freely select a representative by requiring unions, such as the petitioner herein, to become "certified" as the majority representative of the craft or class of employees before the union has standing to seek a judicial remedy. The petitioner further asserts that this ruling assures that the union will be unable to come to the aid of those who have embraced it, thus undermining the employee confidence in the union and eclipsing the union's chances of becoming certified. Nothing could be further from the truth,

for although Congress has not chosen to give uncertified unions standing to invoke the protection of the Railway Labor Act, it has clearly given the employees such standing. If the employees feel that their rights are being interfered with, the Court's arms are open to embrace them and give them the protection of the Act through preliminary injunctive relief, etc. See cases cited by petitioner at page 16 of the Petition.

Both the District Court and the Circuit Court properly applied the criterion for the issuance of a preliminary injunction, as set forth by the Circuit Court (Petitioners' Appendix B, p. 14a):

"In determining whether the District Court abused its discretion, we must consider whether the plaintiffs have shown a strong likelihood of success on the merits; whether the plaintiffs have shown irreparable injuries; whether the issuance of a preliminary injunction would cause substantial harm to others; and where the public interest lies. *North Avondale Neighborhood Ass'n v. Cincinnati Metropolitan Housing Authority*, 464 F.2d 486 (6th Cir. 1972)."

The failure of the plaintiffs to meet the abovementioned burden is fully set forth in the opinions of both lower courts and will not be reprinted, but reference is hereby made to those opinions as they appear in the Appendix to the Petition.

The petitioner insists that the opinion of the Circuit Court below is in derogation of the National Labor Policy, thus violates issues of strong public interest and, therefore, is erroneous; however, the public interest involved is not to assure the election of the Teamsters, or any union, the public interest, as dictated by Congress, is:

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise of the right of employees to join a labor organization. . . ." 45 U.S.C. §151(a)

The facts in the instant case reflect that there has been no interruption to commerce, for as set forth in the Petition at page 3, the respondent is the nation's largest air taxi carrier of freight and the second largest carrier of mail. Since the initiation of this action in April of 1975, to the date of this Brief, there has been absolutely no interruption to commerce and the respondent has been able, through the efforts of its employees, to continually expand its services to the citizens of this country.

The petitioners' insistence that the acts of the respondent complained of were in derogation of the provisions of the Railway Labor Act are further demonstrated to be unfounded by the fact that after the National Mediation Board held the election and dismissed the case for failure of the Teamsters to procure a majority from the employees, the Teamsters did not challenge the dismissal and pray for a new election, but allowed the employees' will, as demonstrated by their votes, to stand.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari to the Sixth Circuit Court of Appeals should be denied.

Respectfully submitted

SCOTT F. MAY

JOHN T. MORSE

Suite 2600

100 North Main Building

Memphis, Tennessee 38103

Attorneys for Respondent

Of Counsel:

WATSON, COX, ARNOULT & MAY

APPENDIX A

Statutes Involved

Section 151. Definitions—Short title.—When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act [49 U.S.C. § 1 et seq.], and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the United States Court of Appeals for the District of Columbia.

This Act may be cited as the "Railway Labor Act."

152. General duties.—First. Duty of carriers and employees to settle disputes. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives. Representatives, for the purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining—Freedom from interference by carrier—Assistance in organizing or maintaining organization by carrier forbidden—Deduction of dues from wages forbidden. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other

contributions payable to labor organizations, or to collect or assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act [June 21, 1934], then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives—Time—Place—Private agreements. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the re-

ceipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules or working conditions contrary to agreement or to section 156 forbidden. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act [§ 156 of this title].

Eighth. Notices of manner of settlement of disputes—Posting. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives—Designation by Mediation Board—Secret elections. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organiza-

tions that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations—Prosecutions and penalties. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the

duty of any district attorney of the United States [United States attorney] to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Union membership a condition of employment—Check off. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally

applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties), uniformly required as a condition of acquiring or retaining membership, Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, first (h) of this act [§ 153 of this title] defining the jurisdictional scope of the first division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall

provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs fourth and fifth of section 2 of this act [this section] in conflict herewith are to the extent of such conflict amended.